Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

Implementation of Section 10 of the Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-258
Indecent Programming and Other Types of Materials on Cable Access Channels	)	

COMMENTS

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The Commission should reiterate that operator decisions regarding the voluntary prohibition of "indecent" programming on leased access programming are to be based solely on operator "judgment." Individual policies may vary substantially depending on editorial practices, community standards, and system resources. In its rules on mandatory leased access blocking, the Commission must facilitate operator reliance on programmer certification and permit the operator reasonable alternatives in implementing congressional intent.

In the area of PEG access channels, the Commission must recognize the breadth of the congressional mandate with respect to the type of programming at issue, and affirm the operators' broad discretion regarding implementation policies.

Finally, the Commission must recognize that, despite removal of certain statutory immunity, cable operators do not "sponsor" access programming and necessarily retain an array of common law defenses to liability in exercising editorial "judgment." The Commission's rules must be preemptive, must absolve operators of liability during the pendency of local dispute resolution, and should foreclose damages for a good faith refusal to carry "offensive" programming.

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Introduction

The Cable Television Consumer Protection and Competition Act of 1992 imposes a dramatic change in the ability and responsibility of cable operators to supervise and restrict programming offered over commercial leased access channels and public, educational and governmental ("PEG") access channels.

PEG access channels, as well as commercial leased access channels, afford third parties unaffiliated with franchised operators the ability to communicate directly with cable subscribers. Indeed, access channels have operated since the 1984 Cable Act almost entirely beyond the editorial control of cable operators.

Access channels, particularly PEG access channels, have accomplished much of their intended objective. There are today

some 2,000 PEG access channels churning out more than 15,000 hours of new programming each week -- more than that of ABC, CBS, NBC, and PBS combined.[1/] The breadth of this programming is staggering, and its nature varies extensively from community to community.

But cable access channels have not been without problems. As Senator Helms explained, "These leased access channels were intended to promote diversity, but instead they promote perversity."[2/] Both PEG access and leased access channels have, in fact, been used in many cases to deliver programming that is offensive to cable operators and cable subscribers alike. This abuse has tarnished the reputation of individual cable operators, who are invariably and unjustly blamed for carrying offensive programming. Section 10 of the 1992 Cable Act attempts to remedy this problem by reasserting a role for the cable operator in policing access programming.

Cable operators do not relish their new role under Section 10. The task is necessarily a difficult one. The FCC rules adopted in this proceeding must be flexible to permit different operators with different editorial positions and very different local conditions to exercise their statutory rights and

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1/ Multichannel News, Nov. 23, 1992, p. 51.

2/ 138 Cong. Rec. S646 (Jan. 30, 1992).

fulfill their statutory obligations in a manner consistent with congressional intent. In no way should an operator's involvement under Section 10 be construed as an endorsement of the access programming offered over its system.

I. The Commission Must Clarify That Voluntary Prohibitions On Leased Access Programming Are Based On The Exercise Of The Operator's Editorial Judgment And That Operators May Fashion Appropriate Individual Policies

The first provision of Section 10 authorizes cable operators to impose certain voluntary restrictions on leased access programming. The Notice of Proposed Rulemaking ("NPRM") suggests this area is self-executing and requires no Commission action. But the Commission could greatly advance the public interest by taking this opportunity to clarify the statutory language in furtherance of Congress' underlying objectives.

There are several critical points that the Commission should expand upon. First, the statute wisely provides that any decision about the carriage of "offensive" programming is to be made on the basis of the operator's "judgment." The critical question is not whether a particular program is "obscene . . . lewd, lascivious, filthy, or indecent or otherwise unprotected by the Constitution of the United States," but whether the cable operator believes the programming falls into that category. It is then irrelevant under the statute whether either the

Commission or a court would reach the same conclusion as the cable operator. Indeed, operators should not feel compelled to consult with outside counsel each time a questionable leased access programming is presented. The operator should be free to proceed based on a good faith exercise in judgment. The Commission should expressly renounce any more stringent standard, because it would inhibit operators from exercising the discretion Section 10(a) was intended to encourage.

The Commission should also resolve now any confusion that may exist as to the relationship between the two sentences of 10(a), being codified as 47 U.S.C. § 532(h). As recognized in the NPRM, the reference in the second sentence to the depiction of "sexual or excretory activies or organs in a patently offensive manner as measured by contemporary community standards" simply restates existing statutory and regulatory definitions of "indecency." We submit that the purpose of this second sentence is to emphasize that when operators restrict indecent programming (as opposed to "obscene" or otherwise "unprotected" speech), they should first establish a written and published policy governing the process. But whether "obscene" or "indecent" programming is involved, carriage restrictions are to be based on the operator's judgment. Indeed, just as the second sentence statutorily defines the term "indecent," so, too, it defines "judgment." An operator's "judgment" regarding the propriety or impropriety of a particular access program is whatever the operator "reasonably believes."

The Commission should also clarify that each cable operator is to have broad discretion in selecting and enforcing its implementing "policy." In some instances, an operator may be content to rely on self-certification by each programmer (perhaps with an indemnification requirement and a penalty fee for any blatant misrepresentation). In other cases, an operator may want to prescreen each submission.

Operators may also vary in how they implement each of these approaches. Some operators, for example, may feel comfortable prescreening on 24 hours advance notice, others may want the comfort of a full week to complete their review. Some may develop a detailed list of prohibited content, others may prefer to pursue an ad hoc approach. Operators may also vary in the records they wish to develop and maintain regarding their decision-making process.

The point is that cable operators must have broad discretion to fashion an implementing "policy," depending on their own editorial predilections, resources, and local circumstances. While we believe the statute itself makes this clear, the Commission should restate that proposition here. In that same vein, the Commission should also make clear that the authority now vested in cable operators under Section 10 of the Act preempts any conflicting state or local provision.

Finally, the Commission should expressly immunize cable operators from liability for good faith exercise of their rights under this provision. Congress' objectives will be stymied if cable operators fear any exercise of editorial judgment in this area will leave them exposed to legal challenges from disgruntled programmers.

II. Where Operators Utilize A Blocked Leased Access Channel For Indecent Programming, The Commission Must Provide And Permit Reasonable Protections For The Operator

As noted in the NPRM, Section 10(b) of the new Act instructs the Commission to adopt rules limiting the access of children to indecent programming where operators have not voluntarily done so. Section 10(b) requires operators to place "indecent" material on a single channel and to block the channel unless a subscriber requests access in writing.

The NPRM suggests the Commission define "indecent" programming as that "describ[ing] or depict[ing] sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards." That very definition is included in Section 10(a) and is consistent with the definition followed by the Commission in other contexts. We support its adoption here.

Section 10(b) wisely places the burden on the programmer, rather than the cable operator, to identify indecent programming. This is as it should be, for, in contrast to Section 10(a), the treatment of "indecent" programming under Section 10(b) is mandatory, not voluntary. While some operators may be prepared to voluntarily restrict indecent programming, others may lack the the resources or ability to do so. It would be patently unfair, and in conflict with other statutory provisions, to force a censorship role on these operators.

The Commission should adopt regulations in this proceeding that afford comprehensive protection to those operators who wish to rely entirely on programmer certifications. To accomplish that end, programmers should be required to notify operators in writing at least one week prior to the scheduled cablecast whether the programming will be "indecent." If the programmer is unprepared to make an affirmative representation that the content is not "indecent," the operator should be free to either place the programming on the blocked channel or deny carriage altogether.

All regulations adopted should allow operators to impose reasonable conditions on programmer certification. For example, an operator should be able to require that every programmer indemnify it from any liability (including costs and fees) arising from a misrepresentation regarding programming

content. And the operator should be allowed to impose reasonable conditions to afford it adequate assurance that the user could meet possible indemnification exposure (e.g., by posting a bond). Operators should also be able to impose monetary penalties on programmers who make willful or repeated content misrepresentations. Alternatively, operators should be free to deny future carriage to those programmers who make willful or repeated content representations, regardless of the content of subsequent programming.

We do not believe the operator should be under any obligation to verify the accuracy of programmer certifications. Unless the operator has actual knowledge, based on voluntary prescreening, that the programmer is clearly misrepresenting the nature of its programming, it is statutorily entitled to rely on that certification.

Although Section 10(b) clearly enables a cable operator to proceed in reliance on the representations of leased access programmers, that certification does not bar any voluntary review by the operator. Indeed, we strongly disagree with the suggestion in the NPRM that an operator is precluded from placing on the blocked access channel programming it believes is indecent, notwithstanding a contrary certification from the programmer. Section 10(a) gives the operator the ability to totally ban leased access programming based on the belief that

the programming is indecent. It would be illogical to deny the operator the much less drastic remedy of placing the programming at issue on the blocked channel.[3/]

Section 10(b), of course, assumes that a cable operator is capable of offering a "blocked" channel. In many instances, a "blocked" channel will not be practical. The Commission should emphasize that an operator's obligation regarding the "blocked" channel arises only if the operator choses to carry "indecent" leased access programming. So long as the operator refuses such programming, Section 10(b) is irrelevant.

Nothing in Section 10(b) provision gives potential providers of "indecent" leased access programmers the right to insist an operator offer a "blocked" channel option. Moreover, even if the cable system has a "blocked" channel, the operator is still free to deny carriage to a particular "indecent" program, rather than placing it on the "blocked" channel. An operator might, in fact, be forced to exercise that prerogative in cases where the "blocked" channel is at capacity.

3/ We agree, however, that the statute requires the operator to honor a certification that programming is indecent. If the operator decides to carry a program certified as indecent, the operator must offer the programming on a blocked channel, even if the operator does not believe the programming was properly classified as indecent.

Despite the concerns underlying Section 10, most cable operators carry relatively little indecent programming on leased access channels. Although the statute talks about a single blocked "channel," the Commission should clarify that so long as the offensive programming is blocked, the channel need not be blocked on a 24 hour per day basis. Rather than devote an entire channel for this purpose, an operator might chose to maintain a single leased access channel and simply scramble the "indecent" portions of the programming to every subscriber who has not affirmatively requested it. We submit this approach is entirely consistent with Section 10(b), and enhances utilization limited channel capacity.

Finally, the Commission should make clear that the costs associated with establishing and maintaining a "blocked" channel should be borne by leased access providers of indecent programming. The Commission should incorporate that finding into its future rulemaking regarding reasonable rates, terms, and conditions for leased access use.

III. The Commission Must Recognize The Broad Scope Of the Voluntary PEG Access Prohibition And Facilitate Implementation Of Appropriate Individual Policies

The FCC is further directed to adopt rules which enable an operator to prohibit use of any PEG access facility for programming which contains "obscene material, sexually explicit

conduct or material soliciting or promoting unlawful conduct." The FCC interprets congressional intent in defining "sexually explicit" conduct to mean the same types of indecent programming material prohibited on leased access channels. We disagree. The use of distinctively different terminology suggests different intent.

Where Congress uses two different terms in the same statute, it must be assumed that Congress did so for a reason. "Sexually explicit" programming potentially covers a far broader spectrum of programing than does "indecent programming." The former is not always "patently offensive as measured by contemporary community standards." Indeed, a judgment can be made with regard to "sexually explicit" programming without even considering community standards. The operator can readily identify "sexually explicit" programming simply by viewing. The FCC rules cannot subject cable operators to more burdensome standards than Congress intended.

The FCC's interpretation of "unlawful conduct" is similarly flawed. "Unlawful conduct" is not merely prostitution; it includes a vast array of criminal activities, like drug use and illegal gambling. If Congress wanted to limit only prostitution, it could have easily done so. Its use of the far broader term, "unlawful conduct," necessarily encompasses much more. From a public policy perspective, this makes good sense.

There is no reason why Congress would want to empower cable operators to restrict the promotion of prostitution, but not the promotion of other illegal activities.

As with leased access, we submit that cable operators should have substantial flexibility in administering PEG access restrictions. Some operators may want to rely solely on a certification process, others may want to prescreen all programming. Others may want to delegate their authority to an independent board or commission. Because the provision is voluntary, some operators may elect to do nothing.

One area of particular concern involves the concept of a late night "safe harbor" period for "mature" programming. While the NPRM correctly notes that Section 10 focuses on a "blocking" approach, rather than a "safe harbor" approach, that does not mean that cable operators should be precluded from pursuing both approaches. An operator with the statutory option to ban "obscene material, sexually explicit conduct or material soliciting or promoting unlawful conduct" must have the lesser right of confining that programming, and other "mature" programming, to late night hours. As demonstrated in Attachment A, this "safe harbor" approach is, and should remain, a practical and popular method of addressing this problem.

Any operator imposed restrictions on PEG access programming may, of course, run counter to existing franchise

provisions. To avoid any dispute, the Commission should, plainly state that Section 10(c) preempts such conflicting franchise terms.

While operators may elect a more aggressive pre-screening approach, the Commission should reiterate that an operator is entitled to proceed in reliance on certifications from PEG access programmers. An operator should not, for example, be held liable where it acted in reliance on a certification that a particular program was not "obscene." At an absolute minimum, the operator should be able to require that any PEG access programmer indemnify the operator for all liability (including costs and fees) it incurs and to secure adequate assurance that the programmer could actually satisfy this indemnification obligation. Operators pursuing the certification approach should also be able to prospectively ban those PEG access users who willfully or repeatedly mischaracterize programming content.

IV. The Commission Must Recognize That Operators May Still Rely On Common Law Defenses To Liability And Must Be Held Harmless During Dispute Resolution At The Local Level

The combined 1984 and 1992 Cable Acts leave cable operators in a somewhat awkward position with potentially conflicting rights and obligations regarding access programming. While Section 10 of the new Act removes certain immunity

protection, other provisions (e.g., Sections 611(e) and 612(c)(2)) still suggest a limitation on cable operators' editorial discretion over access channels. We submit that the removal of express statutory immunity does not mean that other legal defenses are inapplicable. Moreover, as the Supreme Court concluded when faced with a comparable dilemma in the broadcast context, it would be "unconscionable" to permit "civil and perhaps criminal liability to be imposed for the very conduct the statute demands."[4/] Cable operators should not be held accountable for third party programming they are ecouraged to carry. Accordingly, the Commission should clarify that cable television operators may still rely on the vast array of common law defenses to liability.

As already explained, cable operators must be extended considerable discretion in fulfilling the difficult task assigned them under Section 10. Indeed, they must be afforded the opportunity to render and enforce an initial decision with regard to access programming, with the burden on any affected programmer to seek appropriate relief. Operators must, of course, be held harmless during the pendency of dispute resolution. The sole remedy for an erroneous, but good faith, decision against carrying particular programming would be to require future

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4/ Farmers Educational and Cooperative Union of America v. WDAY, Inc., 360 U.S. 525, 531 (1959).

carriage. Monetary damages in those circumstances would be entirely inappropriate and undermine the authority Congress intended to convey upon cable operators in adopting Section 10.

Although we believe the Commission should provide some initial guidance as to procedural requirements and the breadth of operator discretion, we agree that individual disputes, particularly those tied to community standards, should be resolved locally. We would prefer such matters be handled in court. If local franchising authorities wish to assume original jurisdiction, that is also acceptable. But in that case, certain minimum due process standards must be guaranteed, as municipalities have been historically remiss in adopting rules regarding access operations. Because a cable operator is a private entity, however, we do not believe the procedural promptness required in cases of governmental censorship would be required.[5/]

Conclusion

In its approach to drafting rules limiting carriage of indecent and other types of material on cable access channels, the Commission must recognize that each operator will approach its new authority differently, depending on its views and resources, the level of local access activity, and the community

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5/ See Maryland v. Freedman, 380 U.S. 51 (1965).

standards of the franchise area. The Commission's rules must be sufficiently flexible to accommodate all these differences.

Respectfully submitted,

Acton Corp.
Allen's Television Cable Service, Inc.
Cable Television Association of Maryland, Delaware and District of Columbia
Century Communications Corp.
Columbia International, Inc.
Florida Cable Television Association
Gilmer Cable Television Company, Inc.
Helicon Corp.
Jones Intercable, Inc.
KBLCOM Inc.
Monmouth Cablevision Assoc.
TeleCable Corporation
Texas Cable TV Association
United Video Cablevision, Inc.
West Virginia Cable Television Association

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December 7, 1992

ATTACHMENT A

CITY OF TAMPA

SANDRA W. FREEDMAN
MAYOR

EXECUTIVE OFFICES

TAMPA All-America City 1990

December 2, 1992

Mr. Roger Holleger
General Manager
Jones Intercable, Inc.
4400 West Dr. Martin Luther King Jr. Blvd.
Tampa, Florida 33614

Re: Public Access Channel - Mature Audience Programming

Dear Mr. Holleger:

This letter is in response to numerous complaints I have received from citizens concerning some of the mature audience programming cablecast on the City's Public Access Channel.

In order to address such complaints, I strongly urge you to institute the following procedures. First, the Public Access Channel should be moved as high up in the channel line-up as is possible to lessen the likelihood of unintentional exposure to mature audience programming by children. Second, Jones Intercable should adopt and enforce the mature audience programming policy contained in the policies and procedures recently adopted and recommended by the Tampa Hillsborough County Cable Advisory Committee. This policy requires that mature audience programming be produced and replayed after 10:00 p.m. Third, a written notification should be given to each cable subscriber notifying the subscriber that mature audience programming is cablecast on the Public Access Channel and the subscriber's option to lock-out that channel without charge.

Although I recognize the limitations federal law places upon the exercise by Jones Intercable of editorial control over the Public Access Channel, I believe Jones Intercable's adoption of the

foregoing procedures is in the best interest of the citizens of the City of Tampa.

Sincerely,

Sandra W. Freedman

Sandra W. Freedman
Mayor

cc: The Honorable Chairman & Members of the Tampa City Council
Virginia B. Bogue
Amy Lerom
John McGrath, Operations Improvement Administrator, Cable Communications

ST. PETE / TIMES 11/24/90

Foe of rights law takes on access TV

■ David Caton, who helped overturn Tampa's gay-rights amendment, has a new crusade: fighting racy programing on local cable TV.

By TOM SCHERBERGER
Times Staff Writer

TAMPA — It was a late night in September, and Lee McCanless couldn't sleep. So she turned on the television and started flipping through the channels.

What she found didn't help her sleep.

Somewhere between the Weather Channel and CNN, McCanless stumbled across a video performance of G. G. Allin taking off all his clothes and fondling himself.

On television. In her living room.

McCanless found herself in the bizarre world of public access television, where evangelical preachers share air space with nude dancers.

Shocked as she was by what she saw, McCanless was more startled at the reaction when she complained.

Sorry, she was told, but these programs are protected by the First Amendment. There's nothing that can be done about it.

McCanless was outraged. She wrote a letter to the Hillsborough County Commission complaining about the shows, contacted her cable TV company and spoke with David Caton, Florida director of the American Family Association.

Caton, who helped overturn Tampa's amendment outlawing discrimination based on sexual orientation, wrote the commission last week asking that something be done about public access. He vowed to mount a letter-writing campaign if nothing is done.

But even the general manager of the cable TV company that tapes these shows says he can't do anything.

"Our hands are tied," said Roger Holleger, general manager of Jones Intercable. "We're unable to offer any kind of censorship whatsoever." Even requiring the shows to air late at night, as an advisory committee suggested, is considered censorship, he said.

Some of the shows are so racy — full frontal nudity is common — that even nude-dance club owner Joe Redner said he wouldn't put them on his public access show about freedom of speech.

But Redner defends the producers' right to show them. "I'm afraid that the First Amendment was put there for unpopular speech," he said. "If we all agreed, we wouldn't need a First Amendment, would we?"

David Caton vows to mount a letter-writing campaign if nothing is done.

Holleger said he met with state prosecutors to see if anything could be done, but they determined that the shows did not violate community standards for obscenity.

Efforts to get the producers to change the content of their programs voluntarily haven't worked, either.

"It has gotten worse," said Rock Roque, chairman of the local cable TV advisory committee. "It's like spitting into the wind when you look at the constitutional freedom of expression."

That may change next year, when new rules governing cable television take effect, Holleger said.

As part of the rewrite of cable regulations, Congress gave the Federal Communications Commission power to regulate content on public access channels. But the FCC hasn't written new rules, and it will be months before it does.

Holleger says adult-oriented programing accounts for only 5 percent of what is broadcast on the public access channels.

"There's a lot of good on public access," he said. "It's such a shame that a small percentage of folks are giving it a bad name."

Hillsborough's public access programs run the gamut from the serious to the inane, from the humorous to the outrageous. They are financed through cable fees, and anyone can produce a show. Public access channels vary according to the cable company. Jones, for example, runs the programs on channels 12 and 40.

One program, *Race and Reason*, features a man sitting in front of a Nazi flag and discussing how he says white people are superior and black people are inferior. Another program features a man with a pig hat singing and taking phone calls from viewers.

The League of Women Voters and the *Times* co-sponsored candidate debates this year that aired on public access. High school football games that would never be shown on commercial stations are shown on public access.

Adult-oriented shows generally air after 9 p.m., but Redner said one of them, *Lifestyles of the Up and Coming*, which features wet T-shirt contests and nude dancers, aired twice at 8 a.m. He said he told the producer he thought that was out of line.

Cable TV customers can ask their cable company to block out the public access channel. Holleger said Jones offers that service for free, but other companies charge a small fee.

County Commissioner Lydia Miller said cable companies should be required to offer that service for free.

Holleger said other public access producers worry that their programs will be blocked out by viewers because a few producers are "pushing the envelope, if you will."

The envelope is rather elastic, though. While Jones can't do anything about public access, its franchise agreement prohibits the company from carrying the Playboy Channel.

THE TAMPA TRIBUNE

Peninsula

Tuesday, November 24, 1992

County considers regulation of cable

By KEN KNIGHT
Tribune Staff Writer

TAMPA — The Hillsborough County Commission is considering whether it should regulate when controversial and sexually oriented programs can be shown on public access cable television.

"Public access is being abused," Commission Chairman Ed Turanchik said Monday. "I find some of the programming offensive and downright obscene. I don't think our community should be subjected to that."

Five commissioners — Turanchik, Phyllis Busansky, Jan Platt, Lydia Miller and Joe Chillura Jr. — say there have been hundreds of calls and letters from residents complaining about the content of some adult-oriented programs on the public access channel being aired by cable companies in the county. The board will discuss the issue and consider some action at its meeting Dec. 2.

Commissioners criticized the shows "Lifestyles of the Up and Coming" and "Live On Tape" for their use of foul language and adult content during prime-time hours.

Chillura said a videotape of such material from the public access channel had been circulated among commissioners. He said he believes a countywide public decency ordinance should be implemented or two public access channels should be established to separate adult-oriented programs from family-oriented shows.

Platt and Busansky said they want to find out what power the county has to control programming on public access channels.

Turanchik said he believes shifting the programming to late night hours or installing lock-out devices to block the shows may be appropriate.

Miller is calling for free blocking of the channel. "It's ridiculous to pay for something you don't want," she said.

Commissioners Sylvia Kimbell and Jim Norman couldn't be reached for comment.

The issue flared a few weeks ago when Platt told her colleagues that she and her husband, Bill, were watching television one early evening when a naked woman appeared on the screen.

At the time, the commissioner said, she was scanning channels for a family-oriented program. The veteran lawmaker said she was shocked to see adult-oriented material aired on public access during those hours.

Platt asked County Attorney Emmy Acton to determine what regulations the county could implement to control public access

See PUBLIC, Page 2

The Tampa Tribune, Tuesday, November 24, 1992

Public access cable comes under fire

■ From Page 1

programming.

"I realize there are First Amendment rights," she said Monday, "but I would like to find out what can be done."

Busansky said she supports a proposal being considered by the county's cable advisory committee to create a private, non-profit organization to decide when controversial programs can be aired on public access channels.

The content of public access programs is left to a show's producer, not the cable operator, said Roger Holleger, general manager at Jones Intercable.

"We have to offer the available space on cable to give people the right to free access," Holleger said. While some of the programming could be considered offensive, it's up to the Federal Communications Commission (FCC) to provide guidelines to follow, he added.

"Any complaints we receive are passed on to the FCC," Holleger said.

The Cable Act of 1984 keeps cable operators and the government from control over public access content, said John McGrath, Tampa's cable director. But Congress enacted legislation in October to require the FCC to develop guidelines on public access programming by May, he said.

"We are looking closely at what [the FCC] will come up with," he said.

Attorneys with the county and the city of Tampa are working with Jones Intercable to review the issue, he noted.

St. Pete Times 12/3/92

Commissioners seek power over TV public access

TAMPA — Hillsborough County commissioners, under pressure to do something about nudity on public access television, decided Wednesday there was little they could do.

Still, they tried.

The commissioners voted unanimously to ask local cable TV operators to ban nudity before 10 p.m. and give cable customers the ability to block public access channels free of charge. The commissioners also voted to ask the Federal Communications Commission for more power to regulate public access.

They even asked public access producers to tone down their shows.

The vote is unlikely to have an immediate effect, which failed to please those on either side of the controversy.

"I don't think they did anything," said Joe Redner, a nude dance club owner who produces a weekly talk show on public access.

"I'm appalled," said Jim Clements, whose racy public access program, *Lifestyles of the Up and Coming*, is the focus of the controversy. He said he doesn't plan to change his show, which often includes clips of nude dancers. He questioned who will determine the shows that run late at night.

But David Caton, Florida director of the American Family Association, said the commission didn't go far enough.

"I think it's a terrible waste of taxpayers' money and subscribers' money to have to pay for this trash," Caton said. The commission should have banned indecent programing completely from public access channels, he said.

Commissioner Phyllis Busansky, who crafted the motion the commission adopted, said there was little the county could do. Federal law forbids cable operators from censoring the content of public access programs.

"I think we did as much as we could," she said after the meeting.

Commission Chairman Ed Turanchik agreed. He had proposed cutting off public access programs completely in unincorporated Hillsborough. But that might be considered another form of censorship, said County Attorney Emmy Acton.

Besides, she said, the county's contract with cable operators gives them four months before making such changes. By then new FCC rules could be in place giving cable operators more power to regulate public access, she said.

Roger Holleger, general manager of Jones Intercable, said his company would consider the commission's requests but gave no assurances that they would be carried out.

"We'll do everything we can legally," Holleger said after the vote.

Public access programs are produced at a studio owned and operated by Jones, which serves customers in Tampa. The shows also are seen on other cable systems in unincorporated Hillsborough, in some cases on the same channel as county commission meetings.

The commission chambers were crowded with people from both sides of the controversy. Many had hoped to speak, but Turanchik said the commission didn't have time to hear from everyone.

Rock Roque, chairman of the Tampa-Hillsborough Cable Advisory Committee, said the committee would like more power to enforce the few standards that have been adopted governing public access. But the group is limited to giving recommendations.

Acton said that's about all federal law now allows. Although Congress rewrote cable TV legislation this year that will give cable operators more power over public access, the FCC's rules won't go into effect until February.

— TOM SCHERBERGER